REMARKS

Applicant(s) express appreciation to the Examiner for the recent interview held telephonically with Applicant(s) representative. The amendments presented herein are consistent with the proposals discussed in the interview. The Final Office Action, mailed November 25, 2008, considered claims 1, 2, 4-6, 10-17, 19-21 and 25-28. By this action, claims 1 and 16 have been amended, such that claims 1, 2, 4-6, 10-17, 19-21 & 25-28 remain pending, of which, claims 1, 15 & 16 are the independent claims.

Support for the claim amendments is found throughout the application, including the specification, original claims, and drawings. For example, support for the clause "determining, at the conclusion of the online game session . . . of the same game session" is found in the disclosure on page 18, lines 24-32, and elsewhere throughout the application, for example page 27 lines 29-31. Support for "at the conclusion . . . from at least two client computers from the plurality" is similarly found on page 18, lines 24-32, and is also supported elsewhere. Some of the other amendments that have been made are merely semantic rearrangements, as discussed with the examiner in the interview, or have been made to maintain consistency.

As a preliminary matter, claims 1 and 16 have been amended to address examiner's Objections as noted in paragraph 6 of the Office Action. These claims have also been amended to address and overcome the claim rejections under 35 USC § 112 second paragraph that are noted in paragraphs 7-9 of the Office Action.

Claims 1-2, 4-6, 10-12, 14-17, 19-21 and 25-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Leen et al. (U.S. Patent Application Publication No. 2003/0050114), in view of Lavanchy et al. (U.S. Patent No. 6,758,754) and Zucker et al. (U.S. Patent No. 6,468,155), and further in view of Buchegger (U.S. Patent Application Publication No. 2003/0163729). Claims 13 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Leen et al. (U.S. Patent Application Publication No. 2003/0050114) in view of Lavanchy et al. (U.S. Patent No. 6,758,754) and Zucker et al. (U.S. Patent No. 6,468,155), and further in view of Walker et al. (U.S. Patent No. 7,086,947).

As presented herein for reconsideration, the independent claims define a method (claim 1) for automatically arbitrating at an online game service a disputed outcome because of inconsistent game outcomes reported to the game service by individuals playing the game, a corresponding executable computer program that is tangibly embodied on a computer readable medium (claim 15), and a computer server system for executing the method (claim 16). The method is used in a computing

environment that includes an online game service and online game players playing the game at remote client computers that are connected to the game service. As defined in the claims, the method involves the game service requiring the players to register with an arbitration server at the game service. This is so that, in the event of a disconnect by one or more of the players, a record has been made that each player agreed to play in the game session, irrespective of whether each player finished. The game server creates and stores a unique ID for the session so that each player that is registered for the session is identifiable as to that game session. At the conclusion of online game play, each client computer of the registered game players independently determines results and outcome for the game session for all the players. Thus, the outcome of the game is independently recorded from the perspective of each client computer, and a plurality of independent records of the game session are created to be used in subsequent arbitration and determination of an official score. At the conclusion of the online game session, the gaming service receives reports from the registered players with each report including the results for the game session and for all the registered players, as recorded by the client computer. The game service automatically compares the reports to determine if there are inconsistencies between the reports. If there are none and all registered players reported back, the game service simply declares the outcome of the game session based on the results found in any and all (since they are consistent) of the reports from the client computers. Otherwise, if there was an inconsistency, or if one or more of the registered players did not submit a report, the game service must take further arbitration action. The game service, at the arbitration server, will apply a predefined set of arbitration rules using previously determined trust ratings stored at the game service for any of the registered players to determine the official results for the game session. Finally, a trust rating for each registered player may be updated at the game service, based on events relating to how the game was played by each registered player, regardless of whether a report was submitted by a player or not.

Leen et al. describes a system that provides "enhanced services" for managing game events from various gaming applications. Enhanced services may include event management, statistics generation, user profiling, matching players, gaming advice, and wagering. An apparent goal of Leen is to create "a secure environment that doesn't rely on trust." Leen describes a server-based (thin client) system, where a server "hosts . . . gaming applications" for clients connecting via the web, and "monitors game events 120 generated by clients 102 using a monitor module 110". ¶[0032]; *see also* ¶ [0044]. It is important to note that the server monitors the game events, and that this is not done by

any client. Even when there are 2 servers, as seen in paragraph [0046] of Leen, the first server "monitor[s] the game events 120 of a first set of clients 102" and "a second server 104 monitor[s] the game events 120 of a second set of clients 102." Thus, game event monitoring is performed by centralized servers, with a single server monitoring the game events of multiple clients. While Leen addresses a method for revealing cheating or anti-competitive behavior, the *sole* method discussed for doing so is to "measure any combination of event information 152, statistics information 154, and profile information 156 against certain predetermined thresholds associated with the user . . . [to] determine whether the user is playing a particular gaming application 114 at an expected skill level." [0053].

By way of introduction for the other cited references, and as discussed in the interview, Lavanchy discusses a web-site where players can join teams to play trivia games and the like. In any web-page model such as this, results are necessarily recorded only at the web server and there is no problem of clients potentially submitting inconsistent results, as clients are not making outcome determiniations. Zucker is not addressed to a multiple-player environment, but rather, to a gaming environment where players play games of skill for money and the difficulty of the games is adjusted to attempt to ensure that the provider remains profitable. It further provides for detection of automated game-playing devices. Buchegger addresses network security in an ad-hoc network, and means for determining if there is a "bad node" in the network and sequestering that node.

If there is a guiding principle for obviousness to be found in KSR v. Teleflex, it may be that a person of skill in the art can make common sense determinations of obviousness when contemplating the prior art. However, even under a flexible, "common sense" interpretation of KSR, a person of skill in the art, when considering the prior art at the time of the invention, must be led to the full contemplation of the invention as claimed. Thus, in order for Leen and the other cited references to render the present invention obvious, the references must in some way, whether implicitly or explicitly, lead a person of skill in the art at the time of invention to contemplate each and every limitation that is claimed herein. Leen, even combined with the other cited references, fails to meet this flexible standard for obviousness. As one telling example of this failure, Leen and the other references fail to teach, suggest, or provide motivation to contemplate any analogous mechanism wherein each individual client computer independently determines results and outcomes for all of the registered players of a game session and then reports these results back to the gaming service so that the gaming service can compare the overlapping results and determine if there are any inconsistencies,

particularly as claimed in the present invention. Further, Leen does not disclose nor provide suggestion or motivation for one of skill in the art to contemplate a gaming service engaging in arbitration based on whether all the client computers reported back and whether there are inconsistencies, as claimed in the present invention and then using a trust ratings based arbitration rules to determine a final result, as presently claimed. Rather, Leen teaches an entirely different mechanism for recording the outcome of an online game. One might say it "teaches away", as it teaches a server-centric model for recording game event information at a single central cite. In Leen, a single server monitors and records the game events and results of all the players playing a game application at the server. In contrast to the present invention, when a game application is played on a server-hosted website and results of all players are tracked by the server that is hosting the game application, as occurs in the game environments in Leen, Lavanchy and Zucker, there is no reason nor motivation for one of skill in the art to contemplate the problems of a system where results are recorded simultaneously on individual computers of each game participant, let alone a motivation to contemplate a solution to such a problem. Thus, Leen, whether alone or in combination with the other cited references, does not suggest or imply any motivation for using a model where results are independently determined at client computers and then reported to a central service and arbitrated, particularly as seen in the mechanisms that are claimed herein. Further, a person of skill in the art will not find any further motivation to contemplate the present invention when contemplating the ad-hoc networking scheme discussed in Buchegger, even in combination with the other cited references. Thus, as discussed in the interview, for at least this reason, and because the cited art fails to teach other limitations provided therein, the independent claims, as currently amended, overcome the art of record.

During the interview, Examiner disclosed and briefly discussed a previously unconsidered WIPO reference (WO/2003/092839 – hereinafter referred to as the "'839 publication"), suggesting that the reference may have some bearing on the patentability of the present invention. Applicant(s) express appreciation for this gesture and wish to address the reference at this time. The '839 publication discloses a game system that seeks to minimize bandwidth usage while facilitating a message-based game between wireless devices. The game system described therein could be described as an "asynchronous" gaming system. In the game, one player initiates a game and performs some initial actions in the game, and then sends a "challenge message" to a second player and waits. Once the challenge message is received at the second device, the second player may,

through game software on his local device, accept the challenge, make moves, and then transmit a response back to the challenger. Thus, the game play goes back and forth asynchronously until one player wins or the game is otherwise ended. In such a system, the '839 publication describes the desirability of eliminating the use of a central server from the interaction. *See* page 2, line 20 through page 3, line 10. A central server is eliminated by allowing the two participating devices to communicate directly with one another. See page 5, lines 6 – 27. An alternative embodiment involves the use of a central routing server, but simply to perform routing of messages between the clients. See Figures 7, 8, page 27.

The Examiner suggested during the interview that the two clients described in the '839 publication may be maintaining results for both players simultaneously, with the implication that this may have some bearing on the patentability of the present invention, and Applicant wishes to address this concern at this time. It is readily apparent that the '839 publication does not *anticipate* the present invention under § 102 standards, so Applicant wishes to address possible concerns of obviousness, particularly in light of previously cited art.

There are at least two reasons why the 839 publication does not render the present invention obvious. First, there would be no motivation for a person of skill in the art, at the time of invention, to combine the '839 publication with Leen, Lavanchy, or the other cited references because the '839 publication teaches away from those techniques described therein that the Examiner has suggested may have bearing on the present invention. As mentioned, the '839 publication describes the desirability of eliminating a central server (pg. 2, ln 20 – pg. 3 ln. 10). Even when a central server is brought into embodiments of the 839 invention (Figs. 7 & 8), the server's only role is simply to relay messages between the two participating gamers (pg. 27, lines. 19-35) or to send out a challenge message without ever receiving a response (pg 28 lines 1-7). Because, as previously discussed, Leen and Lavanchy involve the use of a central server to host game applications and monitor game events and results of said game applications, and because the '839 publication *teaches away* from using a central server to monitor game events, there would be no motivation for one of skill in the art to combine the teachings of the 839 reference with Leen and the other cited references.

A second reason that the '839 reference, alone or combined with other cited references, fails to contribute to any finding of obviousness of the claimed invention is its failure to teach, suggest, or provide motivation to contemplate claimed embodiments in which client computing systems make

independent determinations of the results of a match and then submit these results to a central server for arbitration and determination of a final result of a match.

The analysis for this second reason is at least two-fold. First of all, the clients in the '839 publication do not make true independent determinations of results of a match, thereby creating the possibility for inconsistent reports, as occurs in the present invention. In fact, the two variations by which the '839 system may keep score are discussed on page 17 of that reference. In one alternative, "there is no need for the challenge data sent in the challenge message to be retained, since if the opponent accepts the challenge, it is envisaged that the challenge data will be provided in the response message. Therefore, the challenge data can subsequently be discarded, once the challenge message has been sent." (Pg. 17, Lines 20-26). In essence, the two clients are passing the results data for the session back and forth like a football. In the following paragraph, an alternative is described in which, if memory space is not scarce, the challenge data is retained and only the newly calculated response data is sent back to the challenger where these results will be cached and incorporated into the subsequent part of the match which will be processed on that device and where new results will be determined on the challenger's device. However, even in such an implementation, both clients are not independently recording game data and determining the results of a game session independently, particularly as claimed in the present invention. In fact, in the asynchronous system of described in the 839 publication, it would be impossible for two devices to independently determine results for the match, because each segment of the match is only occurring on one device at a time. In other words, the system involves one device processing a segment of the match and calculating the results, then passing the calculated results to the second device which takes the received results and processes the second segment of the match, and on and on. Each client simply stores whatever results data the other client has relayed to it for those portions of the match that were processed on the other players machine, and has no ability to monitor or determine results for those segments. Thus it would appear impossible for the two devices to have potentially inconsistent results for the same match, as may occur in the present invention, as each is trusting the other for the results of that portion of the match which is conducted on the other device. The intervention of a central server in Figure 8 is inapposite, as it is merely a relay for the messages.

One additional analysis involves the simple fact that the '839 publication fails to involve all connected clients reporting their independently calculated (and potentially inconsistent) results to a central gaming service for arbitration, as claimed in the present invention. Now, we combine this

analysis of these two things with our above discussion of the cited references (Leen, Lavanchy, Zucker, Buchegger). Because those references fail to disclose, suggest, or provide motivation for one of skill in the art to contemplate these very mechanisms (independent determinations of results by client computing devices, reporting to a central arbitration server, and the arbitration mechanisms, as claimed) and because the '839 publication also fails to disclose, suggest, or provide motivation, as discussed in this and the previous paragraph, for the same mechanisms, the combination of all five of these references would certainly fail to render the present invention obvious.

In view of the foregoing, Applicant respectfully submits that all the rejections to the independent claims are now moot and that the independent claims are now allowable over the cited art, such that any of the remaining rejections and assertions made, particularly with respect to all of the dependent claims, do not need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice, and particularly with regard to the dependent claims.[1] In fact, many of the dependent claims describe embodiments of the claimed invention that are further limited and distinguishable from the cited art.

[1] Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting any official notice taken. Furthermore, although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 25th day of February, 2009.

Respectfully submitted,

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